Commission is adding a note to 11 CFR 109.10(e)(1) citing to the District Court and Court of Appeals decisions relating to this matter stating that the statutory provision at 52 U.S.C. 30104(c) remains in force.

The Commission is issuing this rule as an interim final rule. This interim final rule will take effect thirty legislative days after its transmittal to Congress. *See* 52 U.S.C. 30111(d). The Commission welcomes public comment on this interim final rule and may address any comments received in a later rulemaking.

The Administrative Procedure Act (''APA'') requires an agency promulgating regulations to publish a notice of a proposed rulemaking in the **Federal Register**. 5 U.S.C. 553(b). The notice requirement does not apply, however, ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). According to the APA's legislative history, a situation is ''impracticable'' when ''the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rule-making proceedings.'' *See Administrative Procedure Act: Legislative History,* S. Doc. No. 248 79–258 (1946); *see also Attorney General's Manual on the Administrative Procedure Act* 15 (1947). '' 'Unnecessary' means unnecessary so far as the public is concerned, as would be the case if a minor or merely technical amendment in which the public is not particularly interested were involved.'' *Id.* ''Contrary to the public interest'' connotes a situation in which the interest of the public would be defeated by any requirement of advance notice. *Id.*

The notice to remove 11 CFR 109.10(e)(1)(vi) is unnecessary because that regulatory provision that has already been invalidated by a federal court and cannot be enforced. 5 U.S.C. 553(b)(B). Removing this provision from the regulations does not involve any exercise of discretion by the Commission. Moreover, because this provision is already unenforceable, the Commission's action will not affect the rights or interests of any person or entity, nor could the public notice and comment period benefit the Commission in this rulemaking.

In addition, a notice and comment period may be contrary to the public interest. The Commission notes that the 2022 elections for federal office are scheduled to take place on November 8, 2022. Although, as noted above, the Commission previously issued guidance on reporting requirements to the regulated community, the fundamental part of that guidance should be reflected in the Commission's regulation as soon as possible before the general election.

In addition, because this interim final rule is exempt from the notice and comment procedure under 5 U.S.C. 553(b), the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 and 604 (Regulatory Flexibility Act). *See* 5 U.S.C. 601(2) and 604(a).

List of Subjects in 11 CFR Part 109

Coordinated and independent expenditures.

For the reasons set out in the preamble, the Commission is amending 11 CFR part 109 as follows:

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (52 U.S.C. 30101(17), 30116(a) AND (d), AND PUBLIC LAW 107–155 SEC. 214(C))

■ 1. The authority citation for part 109 continues to read as follows:

Authority: 52 U.S.C. 30101(17), 30104(c), 30111(a)(8), 30116, 30120; Sec. 214(c), Pub. L. 107–155, 116 Stat. 81.

■ 2. Section 109.10 is amended by removing and reserving paragraph (e)(1)(vi) and by adding a note to paragraph (e)(1).

The addition reads as follows:

§ 109.10 How do political committees and other persons report independent expenditures?

* * * * *

(e) * * *

(1) * * *

Note to § 109.10(e)(1): On August 3, 2018, the United States District Court for the District of Columbia vacated 11 CFR 109.10(e)(1)(vi). *CREW* v. *FEC,* 316 F. Supp. 3d 349 (Aug. 3, 2018), *aff'd,* 971 F.3d 340 (D.C. Cir. 2020). Section 30104(c) of title 52 of the U.S. Code and the remaining provisions of 11 CFR 109.10 remain in force.

* * * * *

Dated: June 8, 2022.

On behalf of the Commission,

Allen J. Dickerson,

Chairman, Federal Election Commission.

[FR Doc. 2022–12771 Filed 6–13–22; 8:45 am]

BILLING CODE 6715–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1002

Consumer Financial Protection Circular 2022–03: Adverse Action Notification Requirements in Connection With Credit Decisions Based on Complex Algorithms

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Consumer financial protection circular.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) has issued Consumer Financial Protection Circular 2022–03, titled, ''Adverse Action Notification Requirements in Connection with Credit Decisions Based on Complex Algorithms.'' In this circular, the Bureau responds to the question, ''When creditors make credit decisions based on complex algorithms that prevent creditors from accurately identifying the specific reasons for denying credit or taking other adverse actions, do these creditors need to comply with the Equal Credit Opportunity Act's requirement to provide a statement of specific reasons to applicants against whom adverse action is taken?''

DATES: The Bureau released this circular on its website on May 26, 2022.

ADDRESSES: Enforcers, and the broader public, can provide feedback and comments to *Circulars@cfpb.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher Davis, Attorney-Advisor, Office of Fair Lending and Equal Opportunity, at (202) 435–7000. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Question Presented

When creditors make credit decisions based on complex algorithms that prevent creditors from accurately identifying the specific reasons for denying credit or taking other adverse actions, do these creditors need to comply with the Equal Credit Opportunity Act's (ECOA's) requirement to provide a statement of specific reasons to applicants against whom adverse action is taken?

Response

Yes. ECOA and Regulation B require creditors to provide statements of specific reasons to applicants against whom adverse action is taken. Some creditors may make credit decisions based on certain complex algorithms,

sometimes referred to as uninterpretable or ''black-box'' models, that make it difficult—if not impossible—to accurately identify the specific reasons for denying credit or taking other adverse actions.[1] The adverse action notice requirements of ECOA and Regulation B, however, apply equally to all credit decisions, regardless of the technology used to make them. Thus, ECOA and Regulation B do not permit creditors to use complex algorithms when doing so means they cannot provide the specific and accurate reasons for adverse actions.

Analysis

ECOA makes it unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction, on the basis of race, color, religion, national origin, sex or marital status, age (provided the applicant has the capacity to contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.[2] In addition, ECOA provides that a creditor must provide a statement of specific reasons in writing to applicants against whom adverse action is taken.[3] ''Adverse action[s]'' include denying an application for credit, terminating an existing credit account, making unfavorable changes to the terms of an existing account, and refusing to increase a credit limit.[4]

Pursuant to Regulation B, a statement of reasons for adverse action taken ''must be *specific and indicate the principal reason(s)* for the adverse action.'' [5] Regulation B explains that ''[s]tatements that the adverse action was based on the creditor's internal standards or policies or that the applicant, joint applicant, or similar party failed to achieve a qualifying score on the creditor's credit scoring system are insufficient.'' [6] The Official Interpretations to Regulation B explain that ''[t]he specific reasons disclosed . . . must relate to and accurately describe the factors actually considered or scored by a creditor.'' [7] Moreover, while appendix C of Regulation B includes sample forms intended for use in notifying an applicant that adverse action has been taken, ''[i]f the reasons listed on the forms are not the factors actually used, a creditor will *not* satisfy the notice requirement by simply checking the closest identifiable factor listed.'' [8] With respect to adverse actions based on a credit scoring system specifically, the Official Interpretations explain that—

> [T]he reasons disclosed must relate only to those factors actually scored in the system. Moreover, no factor that was a principal reason for adverse action may be excluded from disclosure. The creditor must disclose the actual reasons for denial (for example, ''age of automobile'') even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant.[9]

ECOA's notice requirements ''were designed to fulfill the twin goals of consumer protection and education.'' [10] In terms of consumer protection, ''the notice requirement is intended to prevent discrimination *ex ante* because 'if creditors know they must explain their decisions . . . they [will] effectively be discouraged' from discriminatory practices.'' [11] The notice requirement ''fulfills a broader need'' as well by educating consumers about the reasons for the creditor's action.[12] As a result of being informed of the specific reasons for the adverse action, consumers can take steps to try to improve their credit status or, in cases ''where the creditor may have acted on misinformation or inadequate information[,] . . . to rectify the mistake.'' [13] In addition, Congress also believed ECOA's notice requirement would have ''a beneficial competitive effect on the credit marketplace.'' [14]

Creditors who use complex algorithms, including artificial intelligence or machine learning, in any aspect of their credit decisions must still provide a notice that discloses the specific principal reasons for taking an adverse action. Whether a creditor is using a sophisticated machine learning algorithm or more conventional methods to evaluate an application, the legal requirement is the same: Creditors must be able to provide applicants against whom adverse action is taken with an accurate statement of reasons.[15] The statement of reasons ''must be specific and indicate the principal reason(s) for the adverse action.'' [16] A creditor cannot justify noncompliance with ECOA and Regulation B's requirements based on the mere fact that the technology it employs to evaluate applications is too complicated or opaque to understand. A creditor's lack of understanding of its own methods is therefore not a cognizable defense against liability for violating ECOA and Regulation B's requirements.

About Consumer Financial Protection Circulars

Consumer Financial Protection Circulars are issued to all parties with authority to enforce Federal consumer financial law. The CFPB is the principal Federal regulator responsible for administering Federal consumer financial law, *see* 12 U.S.C. 5511, including the Consumer Financial Protection Act's prohibition on unfair, deceptive, and abusive acts or practices, 12 U.S.C. 5536(a)(1)(B), and 18 other ''enumerated consumer laws,'' 12 U.S.C. 5481(12). However, these laws are also enforced by State attorneys general and State regulators, 12 U.S.C. 5552, and prudential regulators including the Federal Deposit Insurance Corporation, the Office of the Comptroller of the

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[1] While some creditors may rely upon various post-hoc explanation methods, such explanations approximate models and creditors must still be able to validate the accuracy of those approximations, which may not be possible with less interpretable models.

[2] 15 U.S.C. 1691(a).

[3] 15 U.S.C. 1691(d)(2)(A), (B); *see also* 15 U.S.C. 1691(d)(3). A creditor may either provide the notice or follow certain requirements to inform consumers on how to obtain such notice. 15 U.S.C. 1691(d)(2)(B).

[4] 12 CFR 1002.2(c).

[5] 12 CFR 1002.9(b)(2) (emphasis added); *see also* 12 CFR part 1002 (supp. I), sec. 1002.9, para. 9(b)(2)–9 (''The Fair Credit Reporting Act (FCRA) requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or its own files. . . . The FCRA also requires a creditor to disclose, as applicable, a credit score it used in taking adverse action along with related information, including up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor). Disclosing the key factors that adversely affected the consumer's credit score does not satisfy the ECOA requirement to disclose specific reasons for denying or taking other adverse action on an application or extension of credit.'').

[6] 12 CFR 1002.9(b)(2).

[7] 12 CFR part 1002 (supp. I), sec. 1002.9, para. 9(b)(1)–2. A creditor, however, ''need not describe how or why a factor adversely affected an applicant.'' 12 CFR part 1002 (supp. I), sec. 1002.9, para. 9(b)(1)–3.

[8] 12 CFR part 1002 (app. C), comment 4 (emphasis added). The sample forms are illustrative and may not be appropriate for all creditors. If a creditor chooses to use the checklist of reasons provided in one of the sample forms and if reasons commonly used by the creditor are not provided on the form, the creditor should modify the checklist by substituting or adding other reasons. 12 CFR part 1002 (app. C), comment 3.

[9] 12 CFR part 1002 (supp. I), sec. 1002.9, para. 9(b)(1)–4.

[10] *Fischl* v. *Gen. Motors Acceptance Corp.,* 708 F.2d 143, 146 (5th Cir. 1983); *see also id.* (calling these provisions ''[p]erhaps the most significant of the 1976 amendments to the ECOA'').

[11] *Treadway* v. *Gateway Chevrolet Oldsmobile, Inc.,* 362 F.3d 971, 977–78 (7th Cir. 2004) (quoting *Fischl,* 708 F.2d at 146); *see also* S. Rep. 94–589, 94th Cong., 2d Sess., at 4, *reprinted in* 1976 U.S.S.C.A.N. 403, 406 (calling the notice requirement ''a strong and necessary adjunct to the antidiscrimination purpose of the legislation'').

[12] S. Rep. 94–589, 94th Cong., 2d Sess., at 4, *reprinted in* 1976 U.S.S.C.A.N. 403, 406.

[13] *Id.*

[14] S. Rep. No. 94–589, at 4, 7 (1976).

[15] 15 U.S.C. 1691(d)(2)(A), (B); 12 CFR 1002.9(a)(2)(i), (ii).

[16] 12 CFR 1002.9(b)(2).

Currency, the Board of Governors of the Federal Reserve System, and the National Credit Union Administration. *See, e.g.,* 12 U.S.C. 5516(d), 5581(c)(2) (exclusive enforcement authority for banks and credit unions with $10 billion or less in assets). Some Federal consumer financial laws are also enforceable by other Federal agencies, including the Department of Justice and the Federal Trade Commission, the Farm Credit Administration, the Department of Transportation, and the Department of Agriculture. In addition, some of these laws provide for private enforcement.

Consumer Financial Protection Circulars are intended to promote consistency in approach across the various enforcement agencies and parties, pursuant to the CFPB's statutory objective to ensure Federal consumer financial law is enforced consistently. 12 U.S.C. 5511(b)(4).

Consumer Financial Protection Circulars are also intended to provide transparency to partner agencies regarding the CFPB's intended approach when cooperating in enforcement actions. *See, e.g.,* 12 U.S.C. 5552(b) (consultation with CFPB by State attorneys general and regulators); 12 U.S.C. 5562(a) (joint investigatory work between CFPB and other agencies).

Consumer Financial Protection Circulars are general statements of policy under the Administrative Procedure Act. 5 U.S.C. 553(b). They provide background information about applicable law, articulate considerations relevant to the Bureau's exercise of its authorities, and, in the interest of maintaining consistency, advise other parties with authority to enforce Federal consumer financial law. They do not restrict the Bureau's exercise of its authorities, impose any legal requirements on external parties, or create or confer any rights on external parties that could be enforceable in any administrative or civil proceeding. The CFPB Director is instructing CFPB staff as described herein, and the CFPB will then make final decisions on individual matters based on an assessment of the factual record, applicable law, and factors relevant to prosecutorial discretion.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2022–12729 Filed 6–13–22; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Consumer Financial Protection Circular 2022–02: Deceptive Representations Involving the FDIC's Name or Logo or Deposit Insurance

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Consumer financial protection circular.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) has issued Consumer Financial Protection Circular 2022–02, titled, ''Deceptive representations Involving the FDIC's Name or Logo or Deposit Insurance.'' In this circular, the Bureau responds to the question, ''When do representations involving the name or logo of the Federal Deposit Insurance Corporation (FDIC) or about deposit insurance constitute a deceptive act or practice in violation of the Consumer Financial Protection Act (CFPA)?''

DATES: The Bureau released this circular on its website on May 17, 2022.

ADDRESSES: Enforcers, and the broader public, can provide feedback and comments to *Circulars@cfpb.gov.*

FOR FURTHER INFORMATION CONTACT: Brad Lipton, Senior Counsel, Legal Division, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Question Presented

When do representations involving the name or logo of the Federal Deposit Insurance Corporation (FDIC) or about deposit insurance constitute a deceptive act or practice in violation of the Consumer Financial Protection Act (CFPA)?

Response

Covered persons or service providers likely violate the CFPA's prohibition on deception if they misuse the name or logo of the FDIC or engage in false advertising or make misrepresentations to consumers about deposit insurance, regardless of whether such conduct (including the misrepresentation of insured status) is engaged in knowingly. Representations about deposit insurance may be particularly relevant with respect to new financial products or services, especially those involving new technologies such as digital assets, including crypto-assets.

Analysis

The Bureau administers a number of laws and regulations relating to the offering or providing of deposit accounts, including these provisions: [1]

- The Truth in Savings Act and its implementing regulation (Regulation DD), which enable consumers to make informed decisions about their accounts at depository institutions through the use of uniform disclosures; [2]
- The Electronic Fund Transfer Act and its implementing regulation (Regulation E), which protect consumers engaging in electronic fund transfers and remittance transfers; [3]
- Portions of the Federal Deposit Insurance Act (FDI Act) and its implementing regulations, which require depository institutions lacking Federal deposit insurance to make certain disclosures; [4]
- The CFPA, which, among other things, prohibits unfair, deceptive, or abusive acts or practices.[5]

Deposit insurance has long been a means to promote confidence in the banking system. The most common form of deposit insurance is administered by the Federal Deposit Insurance Corporation (FDIC).[6] The FDIC insures deposits at FDIC-insured banks and savings associations up to the maximum deposit insurance amount, currently $250,000, per depositor, per FDIC-insured bank, for each account ownership category.[7]

Representations about deposit insurance may be particularly relevant with respect to new financial products or services, especially those involving new technologies such as digital assets, including crypto assets. New technologies may yield significant benefits for consumers, workers, and small businesses. Nonetheless, especially with respect to new

[1] *See* 12 U.S.C. 5481(12), (14), 5511.

[2] *See* 12 U.S.C. 4301–4313; 12 CFR pt. 1030; CFPB Exam Handbook, at TISA 1, *https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual.pdf.*

[3] *See* 15 U.S.C. 1693–1693r; 12 CFR pt. 1005; CFPB Exam Handbook, at EFTA 1, *https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual.pdf.*

[4] *See* 12 U.S.C. 1831t(b)–(f); 12 CFR pt. 1009.

[5] *See* 12 U.S.C. 5531, 5536; CFPB Exam Handbook, at UDAAP 1, *https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual.pdf.*

[6] Additionally, accounts at federally insured credit unions are insured through the National Credit Union Share Insurance Fund (NCUSIF). *See* NCUA, *How Your Accounts are Federally Insured* (Feb. 2018), *https://www.ncua.gov/files/publications/guides-manuals/NCUAHowYourAcctInsured.pdf.*

[7] *See* FDIC, *Your Insured Deposits,* at 3 (Jan. 2020), *https://www.fdic.gov/resources/deposit-insurance/brochures/documents/your-insured-deposits-english.pdf.*